

Andrew Altschul, OSB No. 980302
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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

BEN COLEMAN-FIRE,
Plaintiff,
v.
STANDARD INSURANCE COMPANY,
Defendant.

Civil No. 3:18-cv-00180-SB

**DECLARATION OF ANDREW
ALTSCHUL IN SUPPORT OF
DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES AND COSTS**

I, Andrew Altschul, declare under penalty of perjury:

1. I am a partner in the firm of Buchanan Angeli Altschul & Sullivan LLP and I am the attorney for the Defendant Standard Insurance Company in this matter and make this Declaration based upon my own personal knowledge, and if called, could competently testify thereto. I am over the age of 21 years and I have personal knowledge of the matters stated herein.

2. Attached as Exhibit A is a letter containing a settlement demand that was emailed to me on June 1, 2018 by Plaintiff's counsel in this matter.

3. In response to the letter, I conveyed to plaintiff's attorney that Standard was open to mediating the matter, but plaintiff indicated that he "will not consider mediation except possibly to bridge a modest gap," and that "Standard would have to first respond with a figure close to Ms. [sic] Coleman-Fire's initial offer." See June 26, 2018 email attached as Exhibit B.

4. In lieu of contesting Plaintiff's Motion to Compel (Docket No. 13), Standard produced 11-pages of documents subject to Stipulated Protective Order.

I HEREBY DECLARE AND VERIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THAT IT IS MADE FOR USE AS EVIDENCE IN COURT, AND INTENDED SPECIFICALLY FOR THE USE IN THE ABOVE-CAPTIONED COURT PROCEEDING.

DATED: November 22, 2019.

BUCHANAN ANGELI ALTSCHUL & SULLIVAN LLP

s/ Andrew Altschul

Andrew Altschul, OSB No. 980302
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Attorneys for Defendant

Megan E. Glor

Attorneys at Law

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Disability ✪ Health ✪ ERISA ✪ Life

Megan Glor

megan@megan glor.com

June 1, 2018

By e-mail: andrew@baaslaw.com

Andrew Altschul
 Buchanan Angeli Altschul & Sullivan LLP
 921 SW Washington St., Suite 516
 Portland, OR 97205
 Facsimile: (971) 230-0337

Re: *Bethany Coleman-Fire v. Standard Ins. Co.*, Case No. 3:18-cv-00180-SB
Confidential Settlement Offer Per FRE 408

Dear Andrew:

On behalf of Bethany Coleman-Fire, I am writing to extend a settlement offer in the amount of \$1,518,123.15 . Standard's payment would "buy out" Ms. Coleman-Fire's long-term disability claim and rights under the Davis Wright Tremaine group policy and terminate the litigation. This is a very strong case for Ms. Coleman-Fire.

On February 9, 2014, Ms. Coleman-Fire was struck by a car while walking her dog. The force of the collision threw her head into the car's windshield, cracking it; she was then thrown into the air and struck the ground, again with her head. She immediately reported nausea and headache to EMS and in the emergency room. She was diagnosed with a concussion and subsequently developed post concussion syndrome (PCS), with common PCS symptoms, including fatigue, headaches, malaise/feeling unwell, vertigo and sensitivity to light and noise, in addition to cognitive problems and, later depression. Her **physical** symptoms of PCS have been relentless. For example:

- 2/20/14, Dr. Uppal, primary care: Global headache; worsening vertigo with nausea when standing, moving or turning her head.
- 3/3/14, Dr. Ellison, neurologist: Continuous migratory mild dull headache, intermittently worse, continuing fatigue, lack of energy, daytime sleepiness, neck pain, dizziness, feeling of being unable to focus.
- 4/9/14, MPT Persons: Intermittent lightheadedness, headache, working half-time "going ok", but fatiguing very easily, intermittent headaches, dizziness.
- 5/19/14, PT Schlimgen: Fatigue with stress/exercise, constant headaches, sensitivity to noise, "out of body" feeling.
- 7/11/14, Dr. Uppal: Vertigo, dizziness, blurred vision.

Re: *Bethany Coleman-Fire v. Standard Ins. Co.*

Confidential Settlement Offer - FRE 408

June 1, 2018

- 9/9/14, Dr. Chesnutt, sports medicine/concussion expert: Symptoms had worsened with return to work, including nausea and fatigue, exhaustion with minimal activity. Working beyond half-time had caused worsening.
- 12/4/14, OT Yee: Impaired peripheral vision and convergence; fatigue, decreased coordination, exhausted from work.
- 3/3/15, Dr. Chesnutt: Headache, neck pain, vision problems, hearing problems/ringing in ears; feeling dinged or dazed, slowed down, drowsiness, fatigue, sensitivity to light.
- 5/28/15, OT Yee: Extreme fatigue daily, feeling “out of body” when extremely tired or stressed.
- 8/25/15, Dr. Chesnutt: Fatigue, headache, vision problems, hearing problems/ringing in ears, don’t feel right, feeling dinged or dazed, sensitivity to light, sensitivity to noise, lack of stamina.
- 12/11/15, Dr. Chesnutt: Fatigue, precipitous drop in energy and disabling headache after a few hours of work, headaches 3 days/week (disabling headaches twice a month), light sensitivity, not sleeping well.
- 5/22/15, Dr. Walker, neuropsychologist: Daily fatigue, visual problems with limited tolerance for reading.
- 5/26/15, Dr. Chesnutt: Fatigue noted as #1 symptom/concern.
- 6/2/15, Dr. Uppal: Very fatigued, no energy.
- 12/10/15, Dr. Chesnutt: Daily headaches, neck pain, sensitivity to light and noise, fatigue.
- 12/16/15, Dr. Chesnutt: Drop in energy/fatigue after a few hours working, headaches (disabling twice a month), light sensitivity.
- 11/10/16: Dr. Goodwin, neuropsychologist: Susceptibility to fatigue, sleep disturbance, post-traumatic headaches, visual changes, sensitivity to light and sound.

Judicial review will be *de novo*. No reasonable person would conclude that a patient with these persistent **physical** symptoms – which are typical of PCS – could practice law on a daily, predictable basis. Nor would a reasonable person conclude that depression became the cause, in whole or in part, of these physical symptoms of PCS as of September 16, 2014.

Standard’s Mental Disorder limitation also cannot reasonably be interpreted to limit benefits for disability resulting from PCS to 24 months, when cognitive symptoms, a known, common symptom of PCS, result from physical injury to the brain. Further, the policy’s Mental Disorder limitation provides that benefits are payable at the end of the 24-month period if the claimant is disabled by physical symptoms at that time.

Ms. Coleman-Fire fought to return to work and to continue working, unsuccessfully, due to PCS. As the statements submitted to Standard confirm, she was a great lawyer and loved her job. She was a rising star prior to the accident. After the accident, she failed to meet performance goals, even while working part-time, and was unacceptably error-prone.

Standard is required to pay Ms. Coleman-Fire a gross monthly LTD benefit of \$5,875 (salary \$9,791.68), less any Deductible Income under the policy, to 9/18/50 (age 67), her normal

Re: *Bethany Coleman-Fire v. Standard Ins. Co.*
 Confidential Settlement Offer - FRE 408
 June 1, 2018

Social Security retirement age (DOB 9/19/83) so long as she remains disabled from her occupation as a lawyer. Standard terminated benefits on September 15, 2016.

The Past Due Benefits (9/15/2016-5/31/2018) are:

| | | |
|--|---------------|---------------------|
| 9/15/2016-1/31/2017 (4.5 months): | \$5,875 x 4.5 | = \$ 26,437.50 |
| Less Unemployment Received: | | |
| 2016: 7 weeks (weeks 46-52): | | -\$4,720 |
| 2017: 3 weeks (weeks 1-3): | | -\$1,488 |
| | | \$ 20,229.50 |
| 2/1/2017-5/31/2018 (16 months): | \$5,875 x 16 | = \$ 94,000.00 |
| Less 50% of \$7,579.59 monthly work earnings | \$3,789 x 16 | = -\$ 60,624.00 |
| | | \$ 33,376.00 |

Past Due Benefits Total: **\$53,605.50**

The Future Benefits (6/1/18-9/18/50) are:

| | | |
|---|--------------|---------------------|
| 6/1/18-5/31/2019 (end of employment contract) | \$5,875 x 12 | = \$ 70,500.00 |
| Less 50% of \$7,579.59 monthly work earnings | \$3,789 x 12 | = -\$ 45,468.00 |
| | | \$ 25,032.00 |

Ms. Coleman-Fire is not required to work under the policy and does not expect to work after her contract with the Bankruptcy Court expires on May 31, 2019. Thus, she expects her future LTD benefit amount to be \$5,875, payable from 6/1/19 to 9/18/50, when she turns 65 (31.3 years or 375.6 months).

| | |
|--|-----------------------|
| PV of future benefit stream, assuming 4% return on investment: \$5,875 per month, 6/1/19-9/18/50: | \$1,258,166.00 |
|--|-----------------------|

Future Benefits Total: **\$1,283,198.00**

Other:

| | |
|---|----------------------|
| Estimated Attorney Fees and Costs In Litigation: | \$150,000.00 |
| Adverse tax consequences from buyout vs payment over time (incomes taxes 32% (settlement) vs. 24% (payments over time)): | \$ 200,000.00 |

Other Total: **\$350,000.00**

GRAND TOTAL: **\$1,686,803.50**

Re: *Bethany Coleman-Fire v. Standard Ins. Co.*

Confidential Settlement Offer - FRE 408

June 1, 2018

Judicial review will be *de novo* in accordance with WAC 284-50-321. Ms. Coleman-Fire's settlement offer of \$1,518,123.15, which is 90% of the total above, reflecting her strong case. This is not a starting point for negotiation, but is very close to her bottom line. We look forward to receiving Standard's response.

Sincerely,



Megan E. Glor

cc: Ms. Bethany Coleman-Fire

From : megan@meganglor.com
To : andrew@baaslaw.com
Sent : 6/26/2018 12:11PM
Subject : Re: Coleman-Fire

Andrew,

In response to Standard's suggestion of mediation, Ms. Coleman-Fire will not consider mediation, except possibly to bridge a modest gap. Standard would have to first respond with a figure close to Ms. Coleman-Fire's initial offer.

I've attached Plaintiff's First RFP in both PDF and Word. This request is merely asking for documents related to Standard's application and interpretation of the policy's mental illness limitation, which Standard applied to her claim.

Sincerely,

--Megan

Megan E. Glor Attorneys at Law

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On Wed, Jun 20, 2018 at 2:34 PM, Megan Glor <megan@meganglor.com> wrote:

Hi Andrew,

I got your voice message, thanks. I'll discuss with my client and get back to you shortly. I realize you are away for a bit.

Thanks and have a good vacation,

Megan

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS** on the following-named persons on the date indicated below in the manner indicated:

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- email
- notice of electronic filing using the CM/ECF system

Megan E. Glor
John C. Shaw
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megan@meganlor.com
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Attorneys for Plaintiff

DATED: November 22, 2019

BUCHANAN ANGELI ALTSCHUL & SULLIVAN LLP

s/ Andrew Altschul

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